

Internal Revenue Service
memorandum

CC:D:DL-154528-96

Br4:LPlatt

date: January 31, 1997

to: National Director, Compliance Research CP:R

from: Assistant Chief Counsel (Disclosure Litigation) CC:EL:DL

Electronic Disclosure Authorization System

subject:

This responds to your request of December 18, 1996, for clarification of two issues relating to the design of your proposed Electronic Disclosure Authorization System (EDAS) prototype. Specifically, you requested further confirmation that a taxpayer's digitized signature satisfies the "signed ... by the taxpayer" requirement of Treas. Reg. § 301.6103(c)-1(a). You also have asked for a further explanation of limitations on the Internal Revenue Service's (Service's) ability to control redisclosure and use of taxpayers' information by third parties who obtain such information with the taxpayers' consent pursuant to I.R.C. § 6103(c).

Issue 1: Use of Digitized Signatures

I.R.C. § 6103(c) provides that the Service may, subject to requirements and conditions prescribed in implementing Treasury Regulations, disclose returns and return information "to such person or persons as the taxpayer may designate in a request for or consent to such disclosure," so long as such disclosure would not seriously impair Federal tax administration. "Requirements and conditions" prescribed in regulations implementing section 6103(c) include a requirement that a taxpayer's request for or consent to disclosure of a return or return information

must be signed and dated by the taxpayer who filed the return or to whom the return information relates.

Treas. Reg. § 301.6103(c)-1(a) (emphasis added). The terms "signed," and "signature" are not defined in section 6103. Nor does section 6103 specify a particular form of signature or method of signing for purposes of a section 6103(c) consent.

It is appropriate, therefore, to look for guidance to criteria established by Internal Revenue Code (Code) provisions and Treasury Regulations that require a "signature."

Historically, the Service has accepted traditional pen-to-paper signatures to authenticate and verify returns and supporting documents required to be filed under Code sections 6061, 6062, 6063, 6064, and 6065.

However, for purposes of filings required under sections 6061, 6062, 6063, 6064, and 6065, the Commissioner has authority to accept signatures other than pen-to-paper signatures.. In this regard, a Treasury Regulation approved November 1, 1996, provides as follows:

(b) METHOD OF SIGNING. The Secretary may prescribe in forms, instruction, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

Treas. Reg. § 301.6061-1(b); 61 Fed. Reg. 65319-65321 (1996).¹

Thus, given the authority of the Commissioner to accept alternative methods of signature for any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations, we conclude that the Commissioner also may accept as a signature for section 6103(c) purposes, methods of signing prescribed pursuant to Treas. Reg. § 301.6061-1(b). Pursuant to this authority, we are of the view that the Commissioner should accept only signatures that reliably authenticate and verify the consent as that of the taxpayer and which can be retrieved, given the litigation risks faced by the Service with respect to allegations of unauthorized disclosure of Federal tax data, including the potential for an award of civil damages against the United States under section 7431.

Questions as to whether a particular signature technology has been, or would be, accepted by the Commissioner for purposes of required filings under the internal revenue laws or regulations (and, therefore, could be accepted for section 6103(c) purposes), together with an explanation and/or demonstration of the signature technology design, should be directed to the Office of the Assistant Chief Counsel (Income Tax and Accounting), CC:DOM:IT&A. With respect to the particular digitized signature technology proposed for purposes of EDAS, we have referred this matter to IT&A which as of January 31, 1997, has this matter under advisement.

Issue 2: Redisclosure and Use of loan applicant/taxpayers' confidential tax data by third party lenders under EDAS

Section 6103 establishes a general rule that Federal tax returns and return information are confidential and shall not be disclosed except as authorized under the Code. I.R.C. § 6103(a). The unauthorized disclosure of returns or return information may

¹ Pursuant to Treas. Reg. § 301.6061-1(c), the rule in paragraph (b) is effective as of July 21, 1995.

result in criminal penalties against the individual who disclosed the information (section 7213), and/or an action for civil damages (section 7431).

Section 6103(a) then lists the persons subject to the general prohibition on disclosure of Federal tax data. This list does not include private sector banks and similar commercial lending institutions who obtain information pursuant to a taxpayer's consent. Therefore, banks and similar lending institutions that obtain section 6103 protected tax information pursuant to valid section 6103(c) taxpayer consents, receive such data "free and clear" of limitations under the Code and oversight by the Service regarding how or whether such information is used and protected (including whether it is safeguarded and destroyed after only a single use), or whether it is, for example, store housed, sold, leased, published, or otherwise reused or redisclosed for purposes unrelated to the original consent-based disclosure.²

Although section 6103 does not provide authority for regulating access to and use of tax data by lenders participating in EDAS, there nevertheless may be ways to accomplish this result. In this regard, a Memorandum of Understanding or contractual arrangement between the Service and participating lenders might afford the Service the contractual ability to regulate the use of tax data, the breach of which might be grounds for expelling a recalcitrant lender from the EDAS program. Should you wish to explore such possibilities with respect to the design of an EDAS model, we refer you to the General Legal Services function, CC:F&M:GLS.

Finally, while there is no basis under section 6103 for the Service to impose redisclosure and use restrictions on lenders in the context of EDAS, the public's perception (albeit mistaken) may be that the Service has authority and the responsibility to police the handling of sensitive and confidential tax data by lenders participating in an EDAS program. Accordingly, you may wish to consider as part of EDAS design development, incorporating a means to advise loan applicant/taxpayers that the Service has no authority to regulate redisclosure or use by lenders of tax data released to lenders with the consent of loan applicant/taxpayers, and that the Service also has no authority to ensure that lenders use tax data only for the limited purpose intended by loan applicant/taxpayers, *i.e.*, to verify specific items of income tax data for purposes of processing a specific loan application.

² If a third party recipient of tax data under EDAS is a government agency, a technical argument may exist, based on the plain language of section 6103(a), that redisclosure or use of tax data obtained by the agency pursuant to a taxpayer's section 6103(c) consent, for a purpose other than the purpose for which the taxpayer authorized disclosure, constitutes an unauthorized disclosure of Federal Tax information. See section 6103(a) ("no officer or employee" of specified government agencies "shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section." (Emphasis added)).

If you have any questions, please contact Lynnette Platt; CC:EL:DL, at 622-4579, or Norlyn D. Miller, CC:DOM:IT&A, at 622-4940.

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